



MEMORANDUM
COMMUNITY DEVELOPMENT RESOURCE AGENCY
PLANNING SERVICES DIVISION
County of Placer

TO: Honorable Board of Supervisors **DATE:** July 26, 2022
FROM: David W. Kwong, Community Development Resource Agency Director
BY: E.J. Ivaldi, Community Development Resource Agency Planning Director
SUBJECT: Cure and Correct Letter

ACTION REQUESTED

1. Authorize the Chair to execute a letter to Donald Mooney of the Law Offices of Donald Mooney providing an unconditional commitment not to violate the Ralph M. Brown Act with respect to meetings of the Development Review Committee.

BACKGROUND

On July 8, 2022, the Board of Supervisors received a letter from Donald Mooney of the Law Offices of Donald Mooney wherein he asserted on behalf of his clients, Paul and Carla Novaresi, that certain Development Review Committee (DRC) approvals for The Park at Granite Bay project (Project) were done in violation of the Ralph M. Brown Act. The Project is a 56-lot single-family gated residential subdivision on a 16.3-acre site in the Granite Bay area. It was approved by the Board of Supervisors on October 11, 2016.

Mr. and Mrs. Novaresi, through their attorney Mr. Mooney, filed a California Environmental Quality Act (CEQA) lawsuit over the Project in 2016 (Placer County Superior Court, Case No. SCV0038667). The Novaresi's and the developer for the Project also engaged in a separate lawsuit in 2019 over issues related to the Project (Placer County Superior Court, Case No. SCV 0041053). The County prevailed in the CEQA lawsuit at the trial court in November 2017. Mr. and Mrs. Novaresi appealed the trial court ruling and in October of 2020 the Court of Appeal affirmed the trial court ruling in its entirety.

The Novaresis now assert that certain Project approvals are in violation of the Ralph M. Brown Act. Namely, they claim that the issuance of improvement plans for the Project were not in conformance with the Ralph M. Brown Act because the DRC reviewed certain aspects of the plans. The DRC consists of County staff members from various departments, selected by the Community Development Resource Agency Director, who review certain development project components.

Government Code section 54960.2 states that if an interested person submits a cease-and-desist letter with respect to a perceived Ralph M. Brown Act violation, the County can issue a letter providing an unconditional commitment to not engage in the perceived violation. By issuing the letter, the person claiming the violations is "barred from commencing the [lawsuit]" (Gov. Code, § 54960.2(a)(4) and (c)(3).) Here, in an abundance of caution, and to eliminate the expense of ongoing litigation costs, staff recommends execution of a letter identifying the referenced commitment (Attachment A).

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ENVIRONMENTAL IMPACT

The issuance of the letter is not a project under CEQA pursuant to CEQA Guidelines 15378(b) since the issuance of the letter will not result in direct or indirect physical changes in the environment. In addition, an Environmental Impact Report (SCH# 2015022026) for the Park at Granite Bay project was previously certified by the Board on October 11, 2016.

FISCAL IMPACT

The issuance of the letter will reduce/eliminate litigation costs for the County as a result of the claims contained within Mr. Mooney's July 8, 2022 letter.

ATTACHMENTS

Attachment A – Letter to Donald Mooney
Attachment B – July 8, 2022 Letter



COUNTY OF PLACER

ATTACHMENT A

BOARD MEMBERS

BONNIE GORE
District 1

JIM HOLMES
District 3

ROBERT M. WEYGANDT
District 2

SUZANNE JONES
District 4

CINDY GUSTAFSON
District 5

175 FULWEILER AVENUE / AUBURN, CALIFORNIA 95603
TELEPHONE: 530/889-4030
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July 26, 2022

Mr. Donald B. Mooney
Law Offices of Donald B. Mooney
417 Mace Blvd., Suite J-334
Davis, CA 95618

RE: July 8 Cure and Correct Letter

Dear Mr. Mooney:

The Placer County Board of Supervisors has received your cure and correct letter dated July 8, 2022 alleging the following described past action of the legislative body:

- holding meetings of its Development Review Committee in violation of the Brown Act.

The County does not agree that Development Review Committee meetings are subject to the Brown Act since the committee is an advisory one formed by the Community Development Resource Agency Director, whose members are also selected/assigned by the Community Development Resource Agency Director. Nonetheless, in order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, pursuant to Government Code section 54960.2, the Board of Supervisors hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

Government Code section 54960.2 further requires that the Board of Supervisors may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment or may be mailed to an address that you have designated in writing.

Very truly yours,

By: _____
Chair Cindy Gustafson
Board of Supervisors

ATTACHMENT B
LAW OFFICE OF DONALD B. MOONEY
417 Mace Boulevard, Suite J-334
Davis, CA 95616
530-758-2377
dbmooney@dcn.org

July 8, 2022

***VIA FEDERAL EXPRESS
AND ELECTRONIC MAIL***

Board of Supervisors
Placer County
175 Fulweiler Avenue
Auburn, CA 95603

Development Review Committee
Placer County Planning Department
3091 County Center Drive, # 140
Auburn, CA 95603

Re: Cure and Correct Letter Regarding Violation of Ralph M. Brown Act

Dear Supervisors:

On behalf Paul and Carla Novaresi, this letter is submitted regarding the County's violations of the Ralph M. Brown Act and Article, Section 3 of the California Constitution. The County's Development Review Committee has consistently violated the requirements of the Ralph M. Brown Act and Article 1, Section 3 of the California Constitution with respect to its various approvals for The Park at Granite Bay Project ("Project") and other projects in the County.

Pursuant to Placer County Ordinance section 17.60.060 the Development Review Committee conducts all administrative review, minor and conditional use permit, variance, rezoning, zoning ordinance amendment applications, specific plans, general plan amendments and development agreements as a staff project review group to advise the planning director, zoning administrator planning commission and board of supervisors on such applications. The Development Review Committee makes recommendations to the zoning administrator, the planning commission and/or to the Board of Supervisors. As such the Development Review Committee's action as subject to the requirements of the Brown Act. (See *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805.) As set forth below, the Development Review Committee's actions regarding the Project violate the requirements of the Brown Act.

**1. THE DEVELOPMENT REVIEW COMMITTEE'S ACTION REGARDING THE
IMPROVEMENT PLANS VIOLATED THE BROWN ACT**

On May 25, 2022 the Development Review Committee approval of the development plans for The Park at Granite Bay Project ("Project"). The action taken by the Development Review Committee was not in compliance with the Brown Act and Article 1, Section 3 of the

California Constitution as the matter was not agendized and the approval done either in closed session or not in a public meeting.

The Brown Act allows the legal remedy of judicial invalidation of illegally taken action. Pursuant to Government Code Section 54960.1, Novaresi demand that the County cure or correct the illegally taken action as follows: vacate and rescind the Development Review Committee's approval of the Development Plans and set the review and consideration for a publicly noticed and agendized meeting with the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment also requires public access to any and all documents in the possession of the public agency related to the action taken, with copies available to the public on request at the offices of the Planning Department and also at the meeting at which reconsideration of the matter is to occur.

As provided by Section 54960.1, the County has 30 days from the receipt of this demand to either cure or correct the challenged action, or inform me of your decision not to do so. If you fail to cure or correct as demanded, my clients are entitled to seek judicial invalidation of the action pursuant to Section 54960.1, in which case they will seek the award of court costs and reasonable attorney fees pursuant to Section 54960.5.

2. THE DEVELOPMENT REVIEW COMMITTEE HAS ENGAGED IN A PATTERN AND PRACTICE OF VIOLATING THE BROWN ACT.

The County's Development Review Committee has also engaged in a pattern and practice of violating the Brown Act. Over the past year the Development Review Committee has taken numerous actions with respect to The Park at Granite Bay Project. The Conditions of Approval for the Project contains numerous conditions that require approval from the Development Review Committee. (See Condition Nos. 2, 3, 4, 17, 22, 24, 35, 36, 39, 44, 71, 74, 78, 81, 84, 86, 87 and 100.).

Pursuant to Government Code, section 54960.2(a), Novaresi requests that the Development Review Committee cease and desist holding its meetings in private and conducting its review in closed session and/or with no noticed meeting or agenda. (Gov't Code, § 54960.2(a)(1), (2).). The County has 30 days after receipt of this letter to provide an unconditional commitment to cease and desist from the past action. (Gov't Code, § 54960.2(b).) The unconditional commitment to cease and desist must be substantially in the form set forth in the Brown Act. (Gov't Code, § 54960.2(c)(1).).

If County fails to take the required action within the 30-day period or takes an action other than the unconditional commitment to have the Development Review Committee comply with the Brown Act, my clients are entitled to seek judicial intervention and an order directing the Development Review Committee's compliance with the Brown Act. (Gov't Code, § 54960.2(a)(4).)

3. FUTURE ACTIONS BY THE DEVELOPMENT REVIEW COMMITTEE

Condition 100 provides that no Building Permits may be issued for the project until the development notebook is provided to and accepted by the Development Review Committee for format and content requirements. Also Condition 74 requires that prior to recordation of the Final Subdivision Map(s), the application shall submit lighting development standards for inclusion in the CC&Rs and that such development standards must reviewed and approved by the Development Review Committee.

It is our understanding that Development Review Committee's reviews and approvals associated with Conditions 74 and 100 have not occurred. Any future action by the Development Review Committee must comply with the requirements and obligations set forth in the Brown Act. If the Development Review Committee fails to comply with the Brown Act regarding these matters, my clients reserve the right to file another cure and correct letter and to seek judicial invalidation of the action pursuant to Section 54960.1 and to seek the award of court costs and reasonable attorney fees pursuant to Section 54960.5.

Sincerely,



Donald B. Mooney
Attorney for Paul and Carla Novaresi

cc: Clayton Cook